

SERVED: November 23, 1993

NTSB Order No. EA-4027

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of November, 1993

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13306
v.)	
)	
HAROLD YOUNG,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William A. Pope rendered in this proceeding on October 15, 1993, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an emergency order of the Administrator to the extent it suspended respondent's mechanic certificate and Inspection Authorization

¹An excerpt from the hearing transcript containing the initial decision is attached.

pending his successful completion of a re-examination of his competence to hold them, but reversed the Administrator's order to the extent it sought a 30-day suspension of that certificate and authorization for respondent's alleged violations of sections 43.13(a) and 43.15(a) of the Federal Aviation Regulations, "FAR," 14 CFR Part 43.² For the reasons discussed below, we find merit in the appeal and will, therefore, reverse the re-examination requirement.

The September 13, 1993 Emergency Order of Suspension alleged the following facts and circumstances with respect to the respondent:

1. At all times material herein you were and are now the holder of Mechanic certificate number 000014367 with an Inspection

²FAR sections 43.13(a) and 43.15(a) provide in relevant part as follows:

"§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

"§ 43.15 Additional performance rules for inspections.

(a) General. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall--

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements...."

Authorization.

2. On or about March 19, 1993, you performed maintenance, to wit, an annual inspection, on civil aircraft N5242M, a Cessna C-152.

3. During the course of the above described inspection you signed your name to a maintenance record entry indicating that N5242M was airworthy and returning the aircraft to service.

4. At the time of the above described inspection both rudder cables of N5242M were frayed and corroded at the aft horn attachment.

5. At the time of the above described inspection N5242M had severe surface corrosion on most of the metal surfaces.

6. The discrepancies described in paragraphs 4 and 5, above, rendered N5242M unairworthy.

7. You failed to use acceptable methods and practices in completing the annual inspection in that you failed to detect the rudder cable corrosion and fraying, and the surface corrosion as described above.

8. In a letter dated July 1, 1993, the Ft. Lauderdale Flight Standards District Office requested that you appear for a re-examination of your qualifications as the holder of a Mechanic Certificate and an Inspection Authorization.

9. Said letter was based, in part, upon your performance of the above described annual inspection of N5242M, in that you failed to properly determine the airworthiness of the aircraft.

10. To date, you have failed to appear for the requested re-examination.

The law judge, noting that the evidence of record did not establish how much, if any, corrosion could be present on an aircraft without precluding a judgment that the aircraft was

still airworthy, found that the Administrator had failed to prove, by a preponderance of the evidence, that the aircraft on which respondent had performed an annual inspection exhibited a degree of corrosion that invalidated, within the meaning of the charged violations, the respondent's inspection.³ Nevertheless, the law judge sustained the Administrator's position that respondent should be deprived of his certificates pending a successful re-examination of his competence to assess, presumably, the amount or level of corrosion that would require the grounding of an aircraft.⁴ We agree with the respondent that the law judge erred in affirming the re-examination requirement.

The law judge and the parties recognize that our precedent establishes a reasonableness standard for re-examination requests. See, e.g., Administrator v. Clay and Richter, NTSB Order No. EA-3905 (1993). Moreover, while the parties differ as to whether such a standard supports the demand for a re-

³The Administrator did not appeal the dismissal of the FAR 43.13 and 43.15 allegations. He has filed a reply in opposition to the respondent's appeal.

⁴It is possible that the law judge's decision to uphold the re-examination request was influenced by evidence arguably bearing on respondent's competence as a mechanic that was unrelated to the corrosion issues identified in the complaint; namely, whether respondent, in light of comments assertedly made to an FAA inspector, fully understood the legal and other requirements applicable to a rebuilding of the subject aircraft (which, after the annual inspection, had been badly damaged in a storm) with parts from another aircraft he owned. The Administrator's reply brief appears to concede that the law judge should not have based his decision on any such evidence, and our review of the validity of the re-examination request has been confined to the evidence and matters of record properly within the scope of the emergency order of suspension, which served as the complaint in this proceeding.

examination here, they also appear to understand that reasonableness is a function of an objective appraisal of the facts giving rise to the request. See Administrator v. Wang, NTSB Order No. 3264 (1991)("Board review of the Administrator's re-examination requests involves an extremely narrow inquiry; namely, whether the request, *objectively viewed*, is reasonable." Emphasis added). Pursuant to this standard, we have upheld re-examination requests growing out of an incident or accident that *could* have been caused by a deficiency in airman skill or knowledge (Administrator v. Ringer, 3 NTSB 3948 (1981)), but have rejected requests where technical competence *could not* have been the cause of the Administrator's regulatory concern.

Administrator v. Chia, et al., NTSB Order No. EA-3862 (1993)(technical competence of mechanic not placed in issue where supervisory sign off on substandard work performed by another did not implicate his own ability as a mechanic). Our difficulty with the Administrator's position that the re-examination request in this case should be upheld despite the partial reversal of his order is that the law judge dismissed the one objective basis for challenging the respondent's competence. That is, the law judge found that the Administrator failed to prove that the respondent returned to service an aircraft that was unairworthy because of corrosion.

We think that, given the law judge's dismissal of charges that essentially impugned respondent's corrosion-detection judgment, the Administrator was obligated to have shown, by some

objective measure, that the respondent's knowledge in the area of corrosion was deficient, without regard to the failed claim that the aircraft he inspected exhibited corrosion which should have grounded it. No such showing was made, for the Administrator's case rested solely on the testimony of an inspector who believed, without offering any reference or source material in support of his subsequently rejected opinion, that the aircraft was not airworthy when respondent inspected it. Since the Administrator introduced no other evidence to impugn respondent's competence to correctly assess the impact of corrosion on an aircraft's airworthiness, we cannot find that the Administrator has established a reasonable basis for his re-examination request.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is granted, and
2. The initial decision and the emergency order of suspension are reversed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.